IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.418 OF 2006

1. Elbee Services Ltd. & others. ...Petitioners.

vs.

1.Tata Finance Ltd. & others. ...Respondents.

Mr.S.N.Verma i/b. M/s.Singhania & Co., for Petitioners.

Mr.B.B.Saraf i/b. M/s.Kartikeya & Associates, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 11th December,2006..

P.C.:-

1. A detail award given by the learned Arbitrator is challenged in this petition filed under Section 34 of the Arbitration and Conciliation Act. The first ground of challenge is that charging of interest at the rate of 62% per annum, is illegal. Firstly, it was tried to be urged that the interest is not charged as per the agreement between the parties. But it appears that the petitioners nowhere disputed that

the petitioner has agreed to the rate of interest in the agreement. It appears from the Award that the interest has been charged by the learned Arbitrator as per the terms of the contract. Then it was submitted that charging of interest at the rate of 62% per annum, is contrary to the provisions of "Usurious Loans Act". Admitted position is that the submission that the provisions of Usurious Loans Act are applicable and according to those provisions charging of rate of interest agreed by the parties in the contract is illegal was never raised before the learned Arbitrator. The question as to whether the provisions of Usurious loans Act are applicable and because of those provisions charging of interest at the rate which is mentioned in the agreement is invalid or valid is a mixed question of facts and law and therefore, it cannot be permitted to be raised in the petition filed under Section 34 of the Arbitration and Conciliation Act, for the first time.

2. The second contention was that the witness examined on behalf of the petitioner had stated that the second charge on two fixed assets of the company was created and other fixed assets which are mentioned in the balancesheet of the company were taken on hire purchase. This submission has been rejected by the learned Arbitrator by holding that the oral evidence led by the petitioner is not admissible. In my opinion, the learned Arbitrator was perfectly justified in ignoring the oral evidence given on this point. Which are

the fixed assets of the company and how those assets have been acquired is the fact within the knowledge of the company and that fact is capable of being proved by the documentary evidence. Obviously in the oral evidence those facts are not admissible. The learned Arbitrator therefore, has rightly appreciated the evidence. The finding in relation to the second charge on the assets of the company is a finding of the fact, for which there is material available on record, hence that finding cannot be disturbed in the limited jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act. The petition, is therefore, rejected.